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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/520,576	03/08/2000	Roland Vincent St. John Killick	03628-0450	1427

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EXAMINER

KEMPER, MELANIE A

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 12/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/520,576

Applicant(s)

ST. JOHN KILLICK, ROLAND
VINCENT

Examiner

M Kemper

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 15 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 22-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 22-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- ☐ Interview Summary (PTO-413) Paper No(s). _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 22-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki in view of Stevens.

Suzuki teaches a method and corresponding system of tracking consumer purchasing data comprising: providing products configured with a product identifier device and transmitting product data to a data acquisition device of the consumer (col. 6, lines 50-65); the point of sale is configured to transmit transaction data to the data acquisition device (abstract, col. 7, lines 1-5); any transaction data and product identification data is stored as purchasing data and transmitted to a data collection center not in communication with the point of sale machine (col. 9, lines 20-55); at the data collection center, analyzing the data to determine a customized message (col. 7, lines 45-55).

Stevens teaches a method and corresponding system of tracking consumer purchasing data comprising: providing products configured with a product identifier device and transmitting product data to a data acquisition device of the consumer (col. 6, lines 20-35); any transaction data and product identification data is stored as purchasing data and transmitted to a data collection center not in communication with the point of sale machine (col. 10, lines 55-60); at the data collection center, analyzing the data to determine a customized message and communicating the message to the user (col. 4,

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lines 60-67, col. 8, lines 10-15); rfi transmitter device (col. 20, lines 5-20) or bar code (col. 10, lines 5-35); personal preferences (col. 7, lines 25-35). It would have been obvious to one having ordinary skill in the art at the time of the invention to have used the personal agent device display of Stevens to display the messages in Suzuki in order to provide convenience to the user of Suzuki where the user would not be required to find a kiosk in order to receive information. It also would have been obvious to have periodically transmitted the data (and in response to polling) since, in the combination, the user is not required to specifically interface with a kiosk and since the information is needed for determining incentives for the shopper. It also would have been obvious to have used an automated vending machine since this is a well known point of sale machine. It also would have been obvious to have activated the product device upon consumption since this would have been adopted for the intended use of monitoring the user's personal preferences for products in the event that the customer shops for more than one person.

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 22-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The independent claims are indefinite with the language of vending machines "is configured to transmit" transaction data since it is not clear that the machine positively transmits the data or that such data exists.

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3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

In Suzuki, the POS is not the same as the kiosk which provides the customized message.

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M Kemper whose telephone number is 703-305-9589. The examiner can normally be reached on M-F (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric W. Stamber can be reached on 703-305-8469. The fax phone numbers

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for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



M Kemper
Primary Examiner
Art Unit 3622

MK
December 23, 2002